WA 85/2007
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE H.N. SARMA

The unsuccessful writ petitioner in W.P.(C) No.477/07 has filed this writ appeal challenging the impugned judgment and order dated 31.1.2007 passed by the Writ Court.

2. We have heard Mr. A.S. Choudhury, learned senior counsel for the appellant and also Mr. VM Thomas, learned Standing Counsel appearing for Respondents No.1, 2 and 3 and Dr. Y.K. Phukan, learned senior counsel for Respondent No.4.

3. There is a dispute going on between the appellant and the Respondent No.4 with regard to their inter-se seniority in service as Assistant Teacher. This seniority requires to be determined by the authority which will eventually determine the entitlement of any one of them to hold the post of Headmaster of Lanka High School, in the District of Nagaon where they are serving now. On earlier occasion in W.P.(C) No.2018/2004, the respondent No.4 challenged an order allowing the present appellant to hold the current charge of the post of Headmaster of the said School. The said writ petition was finally terminated vide judgment and order dated 2.11.2006. The learned Writ Court while disposing the writ petition, in the concluding paragraph held as follows :-

> In view of the above, I am of the considered opinion that it will be appropriate for the Govt. to decide the matter relating to seniority between the petitioner and the respondent No.4. To facilitate the same, I dispose of the writ petition with a direction to the Commissioner and Secretary, Secondary Education, Assam to determine the seniority between the petitioner and the Respondent no.4 in accordance with the then existing Rules, 1982. He will bear in mind that the petitioner has already been promoted to the next higher grade of Assistant Headmistress, Pursuant to her selection, the seniority shall be determined as expeditiously as possible preferably within three months from today after providing all reasonable opportunities of being heard to both the parties i.e. the petitioner and the respondent No.4. Till then, status quo as on today, shall be maintained. .

4. While in terms of the aforesaid direction, the seniority was required to be decided by the Commissioner and Secretary, Education Department, Assam, the appellant was put under suspension by the competent authority on 16.9.2006. It is stated at the Bar that after suspension, the appellant handed over the charge of the Headmaster of the School to the Respondent No.4 on 19.9.2006. Thereafter, the authority vide order dated 20.12.2006 reinstated the appellant in his post pending finanisation of the departmental proceedings. However, after service of the order dated 2.11.2006 passed in W.P.(C) No.2018/2004, the order of reinstatement so passed by the Inspector of Schools, Nagaon (NDC) was kept in abeyance and the same is stated to have been passed in pursuance of the direction of the High Court passed in W.P.(C) No.2018/2004. The grievance of the appellant is that in the said judgment nowhere it has been directed that the appellant be kept under suspension pending decision regarding the seniority to be determined by the Government, as directed by the Writ Court.

5. We have heard the learned counsel for the parties at length. We have also carefully perused the order dated 2.11.2006 passed in W.P.(C) No.2018/2004. A bare perusal of the aforesaid order leaves no manner of doubt that the status-quo was directed to be maintained by the learned Writ Court till finalization of t

he dispute between the parties relating to holding of the post of In-charge Head master of the School and it does not extend to the service career of the appellant. It is for the disciplinary authority to decide whether to keep the appellant under suspension or not after putting him on suspension and, on such consideration, the Inspector of Schools reinstated the petitioner on 20.12.2006. Under no stretch of imagination, the order of the High Court can be interpreted to mean and contain a direction that the appellant be kept under suspension, till determination of the seniority.

6. It is stated at the Bar that although the seniority of the appellant and the Respondent No.4 was directed to be decided within a period of two months, the same has not yet been decided. Mr. VM Thomas, learned Standing Counsel submits that the matter is at the hearing stage by the authorities concerned. In that view of the matter, it is again directed that the respondent authority, namely, the Commissioner and Secretary, Secondary Education, Assam shall determine the seniority between the appellant and the Respondent No.4 as early as possible and at any rate at a date not later than one month from today. After such determination regarding the seniority of the contesting parties, an appropriate order shall also be passed regarding holding of the post of the Headmaster of the School.

7. In view of the aforesaid discussion, we hold that the impugned order dated 17.1.2007 keeping in abeyance of the reinstatement order of the appellant stated to have been passed in pursuance of the order of the High Court passed in W.P.(C) No.2018/2004 has been passed in misinterpretation of the order passed in the said writ petition which is liable to be quashed. Accordingly, we quash the impugned order dated 17.1.2007 passed by the Inspector of Schools, NDC.

8. With the aforesaid modification and direction of the order passed by the learned Writ Court, this writ appeal stands disposed of.

JUDGE CHIEF JUSTICE (ACTG.)

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